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FROM

THE GOVERNOR, AND RESOLUTIONS OF THE LEGISLATURE,
OF MAINE,

In relation to the northeastern boundary of that State.

MAY 7, 1838.

Laid on the table, and ordered to be printed.

To the Senate and House of Representatives :

I herewith communicate for your consideration a communication addressed to me by the Secretary of State of the United States, with the correspondence therein referred to, in reference to the northeastern boundary. This communication is made by request of the President of the United States; and, in compliance with his suggestion, I ask your careful and deliberate attention to the facts and propositions therein contained. The duty devolving upon me would, perhaps, be performed by the simple communication of these documents, without any remarks or comments of my own; but this subject, always interesting to Maine, has become more so by this direct application, on the part of the President of the United States, for the expression of the wishes and the will of this State in reference to the adjustment of this long pending question; and feeling a deep interest, personally and officially, in every thing that relates to it, and anxious, mainly, that the rights and honor of Maine should not be jeopardized or impaired, I feel it to be a duty which I owe to the people who have assigned me my part of responsibility, to speak my honest opinions and views, plainly and unreservedly, upon the grave matters now submitted to you. I ask for my views no other weight or influence than such as their intrinsic value may entitle them to; and I desire only to be regarded as connected with you in guarding, with watchful care, the great interests intrusted to us, and doing my duty, in this important crisis, according to my best judgment. If my views are erroneous, or if I am, in your opinion, unnecessarily strict or severe in my judgment of intentions, or too limited in my suggestions of policy, I trust to you to correct or to overrule me. I assume no right to dictate or control your action.

In the communication from Mr. Forsyth, in connexion with a very lucid and interesting history of the negotiations between the two Governments, we are informed that the discussions between the Federal Government and that of Great Britain have arrived at a stage in which the President thinks it due to the State of Maine, and necessary to the intelligent action of the
Blair & Rives, printers.

General Government, to take the sense of this State in regard to the expediency of opening a direct negotiation for the establishment of a *conventional line*; and if Maine should deem an attempt to adjust the matter in controversy in that form advisable, then to ask the assent of Maine to the same.

The grave and important question, therefore, presented for your consideration, as you will more fully perceive by the documents referred to, is, whether you will clothe the Executive of the United States with the unlimited power of fixing a new and conventional line in lieu of the treaty boundary.

It is certainly gratifying to perceive that the right of Maine to be heard and consulted before the treaty line is abandoned, is fully recognised by the General Government; and I have no doubt the Legislature of Maine will approach the consideration of the proposition in the same spirit it is offered, and with an anxious desire to terminate this long pending and embarrassing question, if it can be done without too great a sacrifice of honor and right. Although the documents are somewhat voluminous, the proposition is single and simple in its character, and easily understood.

I have given to the subject all the reflection and examination I have been able to bestow since the reception of the documents, and with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I can see little to hope, and much to fear, from the proposed departure from the treaty line.

I think that the most cursory examination of the correspondence and movements on the part of Great Britain, must satisfy any one that the leading object which her diplomatists have had in view, since the result of the arbitration, has been to destroy or lay aside the treaty line; to lead us away from the clear, unambiguous, definite terms of that treaty, and involve us in interminable discussions, propositions, and replies in relation to conventional lines, no one of which would be accepted unless it gave to them a large part of our territory. We find that in May, 1833, very soon after the President, in pursuance of the advice of the Senate, had opened a new negotiation to ascertain the line *according to the treaty of 1783*, to which treaty line the negotiation, of course, was confined, the British minister suggested "that this perplexed, and hitherto interminable, question, could only be set at rest by an abandonment of the *defective* description of boundary contained in the treaty, and by the two Governments mutually agreeing upon a *conventional* line more convenient to both parties." The same intention is apparent in the refusal to acquiesce in the proposition to refer the settlement of the treaty line to a commission, to be constituted of an equal number chosen by each party, with an umpire to be designated by a friendly power from the most skilful men in Europe; or, secondly, that the commission should be entirely composed of such scientific men of Europe, to be selected by some friendly power, to be attended in the survey and view of the country by agents appointed by the parties. It was in answer to this proposition that the suggestion of the impracticability of the treaty line was made, and the intention became apparent to lead us away from that inconvenient obstacle to their wishes and plans, the treaty language. The proposition was so equitable and fair, so just to all parties, and so full of promise of adjustment upon proceedings satisfactory to us, that it could not be peremptorily rejected. But although it was entertained, the answer

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to it clogged the proposition with so many conditions, and so limited the powers of the commissioners, and required the concession, on our part, of the all important fact that the St. John's and Restigouche are not Atlantic rivers, that the original plan was at once deprived of all vitality, or power, or use, and in fact the reference would have been merely an agreement to abide by the decision, provided both parties should be satisfied and assent to it.

It is certainly somewhat remarkable that if the assumed fact is true, viz: that the treaty line cannot be laid down or fixed according to the treaty, that so much unwillingness should be exhibited to have an attempt made to ascertain it; or, if Great Britain is so strongly convinced of the justice and strength of her argument and claim, that she should be so reluctant to refer the whole question to disinterested and scientific Europeans, there is an apparent, and I doubt not, a real anxiety to avoid discussion or examination *based upon the treaty*; and I fear that if we once abandon that line in search of a conventional one, we shall never be able to bring them back again to consider the present line, or to recognise the treaty as of any binding efficacy. I fear, too, that the only question in negotiation for a conventional line, will be how large a portion of our territory we must yield up. The suggestion made by our Government to take the river St. John's, from its mouth to its source, as the boundary, was rejected, with a simple expression of wonder that it should have been made; and our Government is told explicitly that "his Majesty's Government cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion regarding the *navigation* of the St. John's, as an integral part of the question." The intimation seems plain, that no negotiation for an exchange of territory or privileges will be entered into, but the single point will be, how shall the disputed territory be divided between the parties? I fear that if we abandon the treaty language, so clear and so decided in our favor, and so much at variance with their claim, we shall leave a certainty for an uncertainty, and throw doubt, confusion, and embarrassment over our claim and our course of action, and yield to Great Britain the great obstacle we now present to her grasping spirit, the solemn treaty of 1783.

And what security have we that any line can be fixed upon which shall be permanent, or what certainty is there that the new line may not be declared to be "impracticable" whenever it may come in contact with any of the plans or wishes of Great Britain? It would certainly be difficult to present a stronger and clearer case than we now do; and if diplomacy and skill can manufacture doubts and embarrassments in the discussion of the question as now presented, we may well despair of ever fixing a certain and unalterable line of boundary. If I am accused of injustice or severity in these remarks, I would point, in justification, to the remarkable progress of the doubts and assertions in relation to the treaty line of boundary. When the question as to which river was the true St. Croix of the treaty (which was the only question *then* in dispute) was before the commissioners under the treaty of 1794, the British agent founded his principal argument for the westernmost river, upon the ground that a line due north from the source of that river would only include a part of one of the rivers (the St. John's) which have their mouths within New Brunswick. He says "the most accustomed and convenient rule, in cases of this kind, is to leave to each power respectively the sources of those rivers that empty themselves, or whose mouths are within its territory upon the sea coast, if

it can be done consistently with, or in conformity with the intent of the treaty." A line due north from the source of the western or main branch of the Schoudiac or St. Croix, will fully secure this effect to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John's, wherein it becomes *impossible*, by reason, that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec, so that this north line *must, of necessity, cross the St. John's*, but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. But if a north line is traced from the source of the Cheputnatecook, it will not only cross the river St. John's within about fifty miles from Frederickton, the metropolis of New Brunswick, but will cut off the sources of the rivers which fall into the Bay of Chaleurs, if not many others, probably of the Meramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two powers, if not of contention between them, instead of "terminating their differences in such a manner as may be best calculated to produce mutual satisfaction and good understanding, which is one of the principal and avowed objects of the treaty." At this time, then, there was no doubt that the line running due north to the highlands of the treaty must cross the St. John's river; and if the starting point was carried east, it is admitted that such line would cut off the Restigouche, which is nearly as far north as our claim; and certainly the line was to run equally far north, whether the starting point was east or west, unless the highlands inclined to the south; and yet we are now required, as a preliminary, to admit that the St. John's and Restigouche are not Atlantic rivers, within the meaning of the treaty. In 1814, when the negotiations which resulted in the treaty of Ghent were in progress, no pretence was made that our line did not extend beyond the St. John's, and according to our present views.

Great Britain, then, by her negotiators, expressly stated that she "desires the *revision* of the frontier between her North American dominions and these of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing, in future, disputes, and such a *VARIATION* of the line of frontier as may secure a direct communication between Quebec and Halifax." And when our negotiators peremptorily refused to agree to any *cession* of territory, the answer was, that they "were not prepared to anticipate the objections contained in the note of the American plenipotentiaries, that they were instructed to treat for a revision of their boundary lines, with the statement which they have subsequently made, that they had no authority to *cede* any part, however insignificant, of the territories of the United States, although the proposals left it open for them to demand an *equivalent* for such cession, in territory or otherwise." And yet, now that territory, which they then offered to pay us for, is claimed as clearly their own; and that line which then was admitted and recognised as including the territory as claimed by us, is now declared to be impracticable, and must be abandoned, and a more convenient one sought for and established.

I feel most sensibly, that the question now presented is one of very grave importance, and that the action now to be had by the Legislature of Maine may, and probably will, have a very material influence upon the relations between this Government and Great Britain.

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The painful conviction is forced upon me, that Great Britain is determined to hold this territory that she now claims, deeming it highly important as securing a connexion between her provinces in time of war and peace; and I reiterate the assertion heretofore made, that "we have little to hope from the forbearance or action of the British Government. Their aim is apparent to expunge the treaty provision, and to hold on, with an unyielding grasp, to their modern claim, and reject all propositions having the treaty line for their basis." I cannot but regard it as unfortunate, that our General Government, although it has recognised our right to be consulted before any conventional line should be adopted, has, in a degree, at least, given countenance to the propriety and expediency of departing from the treaty line. In a note from the Department of State, dated 25th April, 1835, Sir Charles R. Vaughan was assured "that his prompt suggestion, as his Britannic Majesty's minister, that a negotiation should be opened for the establishment of a conventional boundary between the two countries, was duly appreciated by the President, who, had he possessed like powers with his Majesty's Government over the subject, would have met the suggestion in a favorable spirit." Such a suggestion, it seems to me, although dictated, doubtless, by a sincere desire to end the controversy, was well calculated to lead our opponents, as a matter of policy on their part, to clog the previous proposition with insuperable difficulties, and to encourage them to persevere in their attempt to obliterate the treaty language. I think the same effect must have resulted from the singular announcement to the British Government, by the late President of the United States, in 1832, in opening the negotiation under the vote of the Senate, for a settlement of the TREATY line, "that if the plenipotentiaries should fail in a new attempt to agree upon the line intended by the treaty of 1783, there would probably be less difficulty than before in fixing a convenient boundary, as measures were in progress to obtain from the State of Maine more extensive powers than were before possessed, with a view of overcoming the constitutional obstacles which had opposed themselves to such an arrangement."

If a direct proposition had come to us, through the General Government, for a specific line of boundary, yielding to us territory, or privileges of navigation equivalent to the unsettled territory which we might cede to them, it would certainly have presented the question in a different aspect; but the question *now* is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line.

In respect to the proposition for additional surveys, as it seems to me inexpedient for this State to acquiesce in the proposed negotiation for a conventional line, until it is *demonstrated* that the treaty line is utterly impracticable and void for uncertainty, I can have no doubt that the line ought to be run, either by a joint commission of exploration and survey, or independently by our General Government, by its own surveyors. It is evident to me that Great Britain is determined to avoid, if possible, such an examination and exploration and establishment of the line, and such proof of the real facts of the case.

It will be perceived that the President intimates that if the consent of Maine is not obtained for entering into direct negotiations for a conventional line, and all other measures failing, "he will feel it to be his duty to submit another proposition to the Government of Great Britain to refer the decision of the question to a third party."

As this right is claimed, on the part of the President, as within his constitutional powers, without the consent of Maine, and as no action on the part of Maine, in reference to this mode of adjustment, is asked by the President, I forbear to comment upon it, but refer it to your consideration.

Our situation, in relation to this interesting question, at this moment demands the exercise of cool and dispassionate judgment, and careful, cautious, but firm action. We owe it to the General Government and our sister States, to do nothing rashly or hastily; to bear and forbear for the sake of the peace of the nation and the quiet of our borders; but we have a duty to perform to ourselves and our constituents, who have intrusted the rights and honor of Maine to our keeping. Relying upon your patriotism, and intelligence, and caution, I place these documents before you, and ask your action upon them, in the confident hope that the rights and the territory secured to us by our fathers, in the field and the cabinet, will not be impaired or surrendered.

EDWARD KENT.

COUNCIL CHAMBER, *March 14, 1838.*

STATE OF MAINE.

Resolves in relation to the northeastern boundary.

Resolved, That it is not expedient to give the assent of this State to the Federal Government to treat with that of Great Britain for a conventional line for our northeastern boundary; but that this State will insist on the line established by the treaty of 1783.

Resolved, That as this State has never, heretofore, given her consent to the appointment of an umpire under the treaty of Ghent, in 1814, but has protested against the same; and as she believes it to be a grave question whether the provision in the treaty for this purpose has not done its office, and is, therefore, no longer in force, she is not now prepared to give her assent to the appointment of a new arbiter.

Resolved, That our Senators and Representatives in Congress be requested to urge the passage of the bill for the survey of the northeastern boundary of the United States, &c., now pending in Congress; and that if said bill shall not become a law during the present session of Congress, and if the Government of the United States, either alone or in conjunction with Great Britain or the State of Maine, shall not, on or before the first day of September next, establish and appoint a commission for a survey of said boundary line, it shall then be the imperative duty of the Governor, without further delay, to appoint forthwith suitable commissioners and surveyors for ascertaining, running, and locating the northeastern boundary line of this State, and to cause the same to be carried into operation.

Resolved, That the Governor be requested to transmit to the President of the United States one copy of his message to the Legislature, on the subject of the northeastern boundary, and these resolutions, and one copy of the same to each of the Heads of Department at Washington, one copy to each of our Senators and Representatives in Congress, and one copy to the Governor of Massachusetts.

IN THE HOUSE OF REPRESENTATIVES,
March 23, 1838.

Read and passed.

ELISHA H. ALLEN, *Speaker*.

IN SENATE, March 23, 1838.

Read and passed.

N. S. LITTLEFIELD, *President*.

March 23, 1838. Approved.

EDWARD KENT.

SECRETARY'S OFFICE,
Augusta, March 28, 1838.

I hereby certify that the foregoing are true copies of the originals in this office.

Attest :

SAML. P. BENSON, *Secretary of State*.